IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1602 (M/B) of 2001
(Old No. 827 of 1991)

M/s Sharma Cement Pipe Works, Gram and Post
Bhamraula District- Nainital,
Through Sri Rajeev Sharma it Partner.

... Petitioner

Vs

1. Divisional Leave Committee, through the Joint Director Industries, Kumaon Mandal, Nainital.
2. Sales Tax Officer, Bareilly.

.....Respondents

Sri A.K. Joshi learned counsel for the petitioner.
Sri K.P. Upadhyaya learned Standing Counsel for the respondents.

Dated: - July 20, 2006

Coram: Hon'ble P.C. Verma, J
Hon'ble B.S. Verma, J.

By means of this writ petition, the petitioner has challenged the order dated 11-3-1991 passed by the Divisional Level Committee- Respondent No.1 by which the representation of the petitioner was rejected and the petitioner does not press for other reliefs quoted in the writ petition.

The petitioner is a Company known as M/s Sharma Cement Pipe Works having its factory and placed of business in Tehsil Kichha. The petitioner was given exemption under Section 4-A of the U.P. Sales Tax Act now the Trade Tax Act with effect from 24-4-1984 for a period of five years. In this notification, District Nainital appears in Column 3 and the period of exemption was enhanced from 3 years to 5 years.

The said notification was superseded by subsequent notification dated 29-1-1985 and thereafter by notification dated 26.12.1985 and both these notifications were issued on 29-1-1985 and 26-12-1985. The dates of these notifications were changed by

Section 26 of the U.P. Sales Tax Act (Amendment and Validation) (Second) Ordinance, 1990.

In the notification dated 27.8.1984, for the words “thirty first day of March, 1985” the words “twenty eight day of January, 1985” were substituted.

In the notification dated 29.1.1985, for the words “on or after the first day of October, 1982 but not later than the thirty first day of March, 1990” the words “on or after the twenty-ninth day of January, 1985 but not later than the twenty-fifth day of December, 1985” were substituted.

In the notification dated 26.12.1985, the words “on or after the first day of October, 1982 but not later than the thirty-first day of March, 1990” the words “on or after the twenty sixty day of December, 1985 but not later than the thirty-first day of March, 1990” were substituted.

The notification-dated 27.8.1984 was amended for the words “thirty first day of March, 1985”, by the words “twenty eighth day of January, 1985”.

By notification dated 29.1.1985, the District Nainital was brought in Col.1 and the period of exemption was enhanced from 5 years to 7 years, but it was only available to those employees industries whose date of starting of production fell on or after 29.1.1985 but not later than 25.12.1985.

The petitioner was granted exemption from three years to five years by the notification-dated 27.8.1984 and vide notification dated 29.1.1985, the petitioner is entitled for exemption of only 7 years. Since the petitioner’s unit had started production on 24.4.1984 i.e. much before 29.1.1985, therefore, the petitioner’s unit does not fall in the category of units, which are exempted on the basis of date of starting of their production. There is a validation clause in the ordinance under Section 27 of the Act, which reads as under:-

"Validation-(1) Notwithstanding anything in any judgment, decree or order of any court of authority any notification issued or anything done or any action taken before the commencement of this section which conforms to the provisions of the principal Act, or the rules or notifications made thereunder as amended by this Ordinance shall be deemed to be and always to have been valid and lawful as if the provisions of this Ordinance were in force at all material times.

(2) Any notification issued or purporting to have been issued under Section 4-A of the principal Act before the commencement of this Section shall be deemed to have been issued under Section 4-A as amended by this Ordinance and to be operative under and in accordance with the provisions of Section 4-A as so amended and shall continue to have effect until amended or revoked by the appropriate authority in accordance with law.

(3) Where before the commencement of this Section any authority or court has, in any proceeding made any assessment, levy or collection of any tax or passed any order imposing any penalty or making any other demand, under the principal Act, or passed any order modifying, setting aside or quashing (wholly or in part) such assessment, levy, collection, penalty or demand and such assessment or other order becomes inconsistent with the provisions of the principal Act or the notifications issued thereunder as amended by this Ordinance then, subject to the provisions of sub-section (4) any party to the proceeding or the Commissioner of Sales Tax may within six months of the date of such commencement, make an application to such authority or court for review of the assessment or order and thereupon, such authority or court may review the proceeding and make such order, varying or

revising the order previously made, as may be necessary to give effect to the provisions of the principal Act or the notifications as amended by this Ordinance.

(4) The Assessing, Appellate or Revising Authority, as the case may be, may within a period of one year from the commencement of this Section or within the period specified in Section 22 of the principal Act, whichever expires late, make any rectification in any order passed by it where such rectification becomes necessary in consequence of the amendment of the principal Act or the notification issued thereunder by this Ordinance:

Provided that no rectification which has the effect of enhancing the assessment, penalty or other dues, shall be made unless the authority concerned has given notice to the dealer or person concerned of his intention to do so and has allowed him a reasonable opportunity of being hear."

By Section 29 of the said Act, the U.P. Sales Tax (Amendment and Validation) Ordinance, 1990 (U.P. Ordinance No. 10 of 1990) was repealed, which reads as under:-

" Repeal and Saving- (1) The Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1990 (U.P. Ordinance No. 10 of 1990), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the principal Act

as amended by this Ordinance, as if the provisions of this Ordinance were in force at the material times."

In view of the above, the order impugned passed dated 11.3.1991 passed by Respondent No.1- Divisional Level Committee is perfectly justified in accordance with the provisions of notification.

The writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

20-07-2006
Rajeev Dang